

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3144 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

GOVINDRAM HASANALAL LALA

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MS DAXA R VYAS for Petitioner

MR MD PANDYA for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/10/96

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, a retired employee of the respondent Board has prayed that the Board be directed to make payment of his salary for the period during which he worked with the respondent under the orders of the civil court, along with interest and costs.

2. The facts giving rise to the present petition are as under :

The petitioner was employed by the respondent Board and his date of birth was mentioned as 21.10.1920 in his service record. On that basis the petitioner would have completed the age of 58 years on 21.10.1978 and would have, therefore, superannuated on 31.10.1978. However, the petitioner submitted an application dated 15.2.1977 to the respondent Board claiming that his correct birth date was 21.10.1979. In support of the said claim, the petitioner relied upon his horoscope, Life Insurance Policy documents and the affidavit of his mother. The petitioner's birth date in the service record was based on the entry made in his matriculation certificate.

3. Since the concerned authority in the respondent Board rejected the petitioner's application for change of his birth date in the service record, the petitioner represented to the higher authorities in the Board, which representations also were rejected. By letter dated 21.10.1978 the Superintending Engineer (Construction) of the respondent Board directed that the petitioner shall retire with effect from 21.10.1978. The petitioner, therefore, filed Civil Suit No.191 of 1978 before the learned Civil Judge (Senior Division) at Gondal.

4. The trial court initially granted ex parte ad interim injunction in favour of the petitioner, on the basis of which the petitioner continued in service beyond 31.10.1978. However, after hearing the parties the trial court rejected interim injunction application by its order dated 28.11.1978. The petitioner carried the said order in appeal, being Civil Miscellaneous Appeal No.34 of 1978 before the learned Assistant Judge, Rajkot at Gondal, who was pleased to continue ad interim injunction during the pendency of the appeal and ultimately allowed the appeal by judgment dated 5.3.1979 (Annexure 'A' to the petition). The operative part of the said judgment reads as under :

"For the reasons aforesaid, this appeal is allowed and the ad interim injunction is granted to the extent that the appellant/plaintiff shall not be retired by the respondent Board, on the sole ground that he has reached the age of superannuation on 21.10.78, till the disposal of this suit before the trial court.

The trial court is directed to take up the suit as expeditiously as possible and dispose it of within two months and latest within four months

from the receipt of the records and proceedings of the above suit from this Court."

5. It was on the basis of the aforesaid ad interim injunction initially granted by the trial court and thereafter continued by the appellate court that the petitioner continued in service and discharged his duties. Thereafter, on completion of 58 years of age even as per the birth date given by him, the petitioner superannuated with effect from 31.10.1979. There is no dispute about the aforesaid proceedings and the fact that the petitioner did continue in service and discharged his duties till 31.10.1979.

6. No other orders are produced along with the petition, but the learned counsel for the petitioner states that after the petitioner superannuated with effect from 31.10.1979, the suit was dismissed. But copies of the judgment and decree of the trial court are not produced before this Court. The petitioner, however, filed execution application for recovery of an amount of Rs.20,472-50 against the respondent Board for execution of the aforesaid ad interim/ interim orders before the court of the learned Civil Judge (Senior Division), Gondal. The said application and the subsequent appeal also came to be dismissed on the ground that there was no decree which could be executed. The petitioner thereupon preferred Civil Revision Application No.648 of 1994 before this Court which was permitted to be withdrawn with a view to enabling the petitioner to file a substantive petition for a direction for payment of arrears of salary to the petitioner.

7. It is in the aforesaid background that the petitioner has claimed payment of salary for the period from 1.11.1978 till 31.10.1979 during which period the petitioner had admittedly worked as an employee of the respondent Board. The only question which arises for the consideration, therefore, is as to whether the petitioner is entitled to the salary for the aforesaid period during which he had actually rendered services to the respondent Board under the interim orders of the civil court, though ultimately his suit was dismissed by the trial court.

8. It is true that in view of the dismissal of the suit it can be said that the petitioner's correct birth date was 21.10.1920 as entered in his service record and not 21.10.1921 as claimed by the petitioner. In that view of the matter, the initial decision of the respondent Board superannuating the petitioner with

effect from 31.10.1978 cannot be said to be illegal or arbitrary, but at the same time the petitioner had admittedly rendered services to the respondent Board during the aforesaid period under the orders of the Court. On the principle of quantum meruit the petitioner was entitled to be paid the salary for the services rendered by him during the aforesaid period. Similar view is taken by this Court in the case of S.H. Shirekar v. Union of India & others, 1984 (2) GLR 1238.

9. In view of the aforesaid discussion, the petition is allowed and the respondent Board is directed to pay the petitioner the salary and allowances for the period from 1.11.1978 till 31.10.1979 with interest at the rate of 6 per cent per annum from the date of filing of the petition (i.e. 27.3.1985) till the date of payment. If the aforesaid arrears of salary are not paid within two months from the date of receipt of the writ of this Court or a certified copy of the order, whichever is earlier, the respondent Board shall pay interest at the rate of 12 per cent from the date of filing of the petition till the date of payment.

10. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case there shall be no order as to costs.

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